

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

URIEL RAYO NAVARRO, #19197-078 §
VS. § CIVIL ACTION NO. 4:17cv179
UNITED STATES OF AMERICA § CRIMINAL NO. 4:11CR00196-009

ORDER OF DISMISSAL

Petitioner Uriel Rayo Navarro, a prisoner confined at Big Spring C.I., brings this motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255. The motion was referred to United States Magistrate Judge Christine A. Nowak, who issued a Report and Recommendation (Dkt #17) concluding that the motion should be denied. Navarro has filed objections (Dkt #21).

Navarro is in custody pursuant to a conviction for the offense of conspiracy to manufacture or distribute or possess with intent to manufacture or distribute 5 kilograms or more of cocaine, in violation of 21 U.S.C. § 846, 841(b)(1)(A). On August 27, 2013, a jury found Navarro and four co-defendants guilty of the offense. On September 10, 2014, he was sentenced to 180 months of imprisonment. The conviction was affirmed. *United States v. Benitez*, 809 F.3d 243 (5th Cir. 2015). The Supreme Court denied his petition for a writ of certiorari. *Navarro v. United States*, ___ U.S. ___, 136 S. Ct. 1694 (2016).

The present § 2255 motion (Dkt. #1) was filed on March 10, 2017. Navarro argues that he is entitled to relief for the following reasons:

1. His conviction was obtained in violation of the Due Process Clause of the Fifth, Sixth and Fourteenth Amendments;
2. The calculation of his sentence based on the total amount of drugs in the conspiracy was erroneous and a misapplication of the sentencing guidelines; and

3. The Court failed to give meaningful consideration of the Section 3553 factors in sentencing him.

The Government filed a response (Dkt. #11) on June 29, 2017. Navarro filed a reply (Dkt. #15) on August 21, 2017. Magistrate Judge Nowak carefully considered each ground for relief and correctly explained why they lack merit.

In his objections, Navarro does not address the analysis of his claims as presented in the Report and Recommendation; instead, he brings a new claim of ineffective assistance of counsel. Issues raised for the first time in objections to a Report and Recommendation are not properly before the Court. *United States v. Armstrong*, 951 F.2d 626, 630 (5th Cir. 1992).

The Court would add that his objections also lack merit. In order to obtain relief based on ineffective assistance of counsel, Navarro must show that his attorney's representation was deficient and that he was prejudiced by such deficient representation, as required by *Strickland v. Washington*, 466 U.S. 668, 687 (1984). His ineffective assistance of counsel claim focuses on the Section 3553 factors. Once again, the Report and Recommendation correctly explained why Navarro's third ground for relief regarding the Section 3553 factors lacks merit. His claim is not salvaged by switching the focus of his ground for relief to an ineffective assistance of counsel claim. He has not shown that his attorney's representation was deficient or that he was prejudiced by such deficient representation. His objections lack merit.

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by Navarro to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and Navarro's objections are

without merit. Therefore, the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that Navarro's motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255 is **DENIED** and the case is **DISMISSED** with prejudice. A certificate of appealability is **DENIED**. All other motions not previously ruled on are hereby **DENIED**.

SIGNED this 22nd day of July, 2019.



AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE